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HEALTHIER YOU
EAT WHAT YOU WANT

WEIGHT-LOSS ADVERTISING: An Analysis of Current Trends

A FEDERAL TRADE COMMISSION
STAFF REPORT



September 2009

**WEIGHT-LOSS ADVERTISING:
An Analysis of Current Trends**

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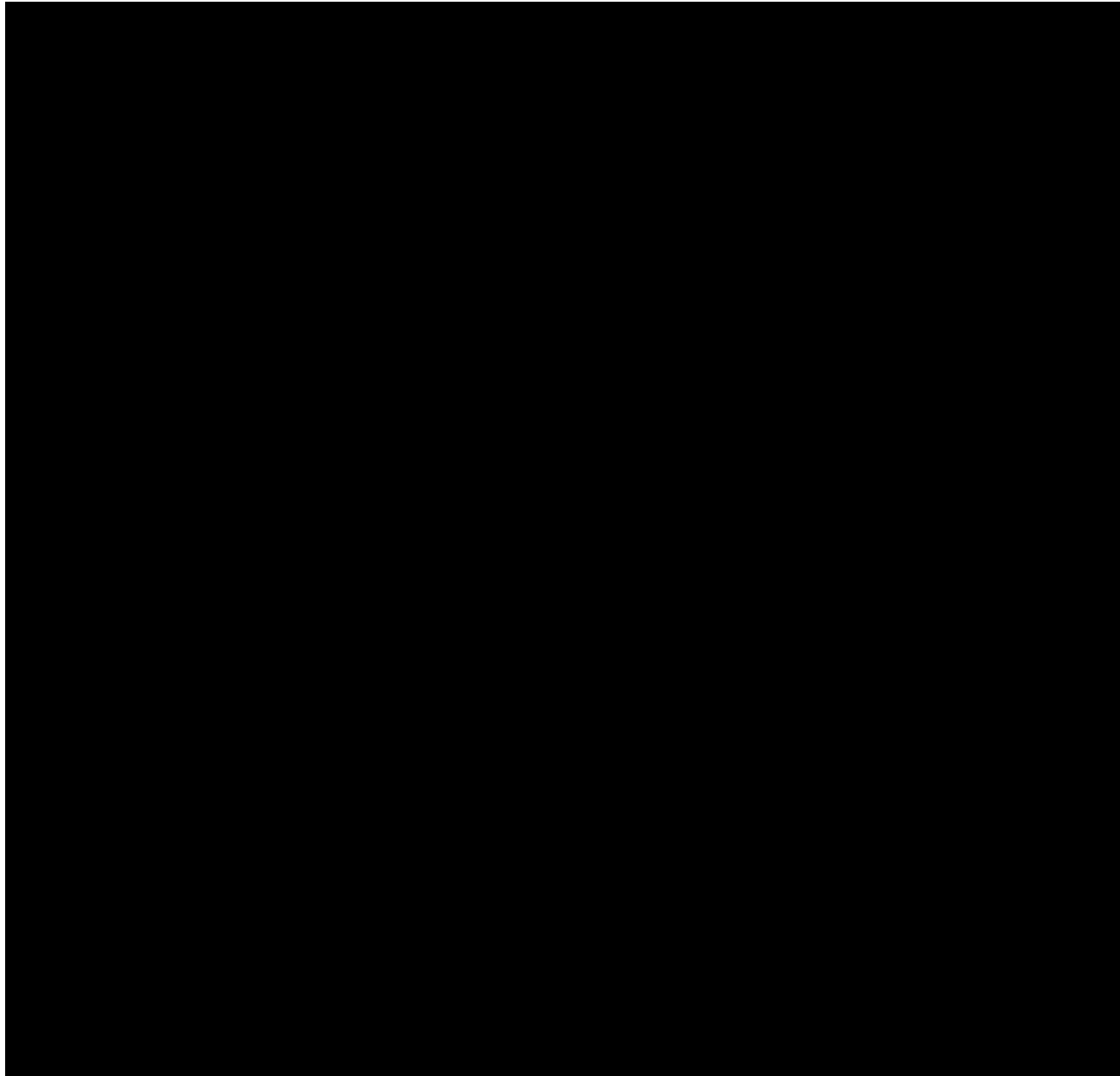
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This report is a project of the staff of the Federal Trade Commission with the assistance of the Partnership for Healthy Weight Management, a coalition of representatives from science, academia, the health care profession, government, commercial enterprises, and organizations whose mission is to promote sound guidance on strategies for achieving and maintaining a healthy weight. The principal authors of this report are attorneys with the Bureau of Consumer Protection, Federal Trade Commission. The views expressed in this report are those of the authors and do not necessarily represent the views of the Federal Trade Commission or any individual Commissioner. Special thanks are given to members of the Partnership, for their contributions to this report and to Michelle Rusk, an attorney with the Federal Trade Commission, for her assistance in editing this report, and Devenette Cox, who managed the data base for the report. The authors wish to acknowledge the contributions of Elizabeth Nichols, Eva Tayrose, Steve Sawchuk, Trisa Wilkens and Michelle Reeve for their assistance in the collection and coding of the advertisements reviewed in this report.



physical activity.

results rather than empty promises and sensationalism to describe
 i services. Advertisers can rely on
 weight loss products and

weight loss ads they carry are based on science, and not on wishful thinking.

to ensure that the information is not to be prohibited

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valuable contribution to the *Call to Action*, by promoting responsible communication of
weight loss information to consumers.

Richard H. Chermak
Richard H. Chermak, M.D., MPH, F.A.C.S.

United States Surgeon General

Introduction

George L. Blackburn, M.D., Ph.D.

As health care professionals, we are concerned about the epidemic of obesity: the relations between excess body weight and such medical conditions as cardiovascular disease, hypertension, type 2 diabetes, osteoarthritis, sleep apnea, and certain cancers (such as breast, ovarian, prostate and colon) are well established. We are equally concerned about false and misleading claims in the advertising of weight loss products and services. Many promise immediate success without the need to reduce caloric intake or increase physical activity. The use of deceptive, false, or misleading claims in weight loss advertising is rampant and potentially dangerous. Many supplements, in particular, are of unproven value or have been linked to serious health risks.

A majority of adults in the United States are overweight or obese. All told, they invest over \$30 billion a year in weight loss products and services. These consumers are entitled to accurate, reliable, and clearly-stated information on methods for weight management. They have a right to know if the weight loss products they're buying are helpful, useless, or even dangerous.

For this reason, the staff of the Bureau of Consumer Protection, Federal Trade Commission (FTC), joined with the Partnership for Healthy Weight Management—a coalition of representatives from science, academia, the health care professions, government agencies, commercial enterprises, and public interest organizations—to collect and analyze weight loss advertising. The Partnership's purpose is to promote sound guidance to the general public on strategies for achieving and maintaining a healthy weight. This report by the FTC staff is a major advance in that direction.

Evidence-based guidelines issued by the National Institutes of Health call for weight loss by simultaneously restricting caloric intake and increasing physical activity. Many studies demonstrate that obese adults can lose about 1 lb. per week and achieve a 5% to 15% weight loss by consuming 500 to 1,000 calories a day less than the caloric intake required for the maintenance of their current weight. Very low calorie diets result in faster weight loss, but lower rates of long-term success.

While exercise added to caloric restriction can help overweight and obese people achieve minimally faster weight loss early on, physical activity appears to be a very important treatment component for long-term maintenance of a reduced body weight. To lose weight and not regain it, ongoing changes in thinking, eating, and exercise are essential. Behavioral treatments that motivate therapeutic lifestyle changes can promote long-term success by helping obese individuals make necessary cognitive and lifestyle changes.

The public often perceives weight losses of 5% to 15% as small and insufficient even though they suffice to prevent and improve many of the medical problems associated with weight gain,

overeating, and a sedentary lifestyle. Many in the weight loss industry promise effortless, fast weight loss, then support this misperception by bombarding Americans with spurious advertising messages touting physiologically impossible weight loss outcomes from the use of unproven products and services. All advertisers, whatever their choice of media--cable television, infomercials, radio, magazines, newspapers, supermarket tabloids, direct mail, or commercial e-mail and Internet websites--know that only those products and services that help people adopt lifestyles that balance

TABLE OF CONTENTS

Introduction.....	iv
Executive Summary.....	vii
I. An Overview.....	1
A. A Never-Ending Quest for Easy Solutions.....	1
B. The Role of Advertising for Weight-loss Products and Services.....	2
C. Weight Loss: A Multi-Billion Dollar Industry.....	2
II. Collection Methodology and Coding.....	3

Executive Summary

This report attempts to take a comprehensive look at weight loss advertising. The need to do so is compelling. In the last decade, the number of FTC law enforcement cases involving weight loss products or services equaled those filed in the previous seven decades. Consumers spend billions of dollars a year on weight loss products and services, money wasted if spent on worthless remedies. This report highlights the scope of the problem facing consumers as they consider the thousands of purported remedies on the market, as well as the serious challenge facing law enforcement agencies attempting to prevent deceptive advertising.

According to the U.S. Surgeon General, overweight and obesity have reached epidemic proportions, afflicting 6 out of every 10 Americans. Overweight and obesity constitute the second

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performance claims. Although we did not evaluate the substantiation for specific products and advertising claims as part of this report, many of the claims we reviewed are so contrary to existing scientific evidence, or so clearly unsupported by the available evidence, that there is little doubt that they are false or deceptive. In addition to the obviously false claims, many other advertisements contain claims that appear likely to be misleading or unsubstantiated.

Falling into the too-good-to-be-true category are claims that: the user can lose a pound a day or more over extended periods of time; that substantial weight loss (without surgery) can be achieved without diet or exercise; and that users can lose weight regardless of how much they eat. Also falling into this category are claims that a diet pill can cause weight loss in selective parts of the body or block absorption of all fat in the diet. These types of claims are simply inconsistent with existing scientific knowledge.

available scientific research contains very little that would substantiate long-term or permanent weight-loss claims for most of today's popular diet products. Accordingly, long-term or permanent weight-loss claims are inherently suspect.

Clinically Proven/Doctor Approved Claims. Clinically proven and doctor approved claims are also fairly common in weight-loss advertisements, the former occurring in 40% and the latter in 25% of the ads in the sample. Some of the specific claims are virtually meaningless. For example, a representation such as, "Clinical studies show people lost 300% more weight even without dieting," may cause consumers to conclude mistakenly that the clinically proven benefits are substantial, whereas, in fact, the difference between use of the product and dieting alone could be quite small (1.5 lbs. vs. .5 lbs.). These claims do little to inform consumers and most ads fail to provide consumers with sufficient information to allow them to verify the advertisers' representations. Moreover, the Federal Trade Commission, in past law enforcement actions, has evaluated the available scientific evidence for many of the *ingredients* expressly advertised as clinically proven, and challenged the weight-loss efficacy claims for these ingredients.

Natural/Safe Weight-loss Claims. Safety claims are also prevalent in weight-loss advertising. Nearly half of all the ads in the sample (42%) contained specific claims that the advertised products or services are safe and 71% of those ads also claimed that the products were "all natural."

Safety claims can be difficult to evaluate, especially when so many ads fail to disclose the active ingredients in the product. On the other hand, some advertisements disclose ingredients, *e.g.*, ephedra alkaloids, that make unqualified safety claims misleading. Nevertheless, marketers in almost half (48%) of the ads that identified ephedra as a product ingredient made safety claims. Only 30% of the ads that identified ephedra as an ingredient included a specific health warning about its potential adverse effects.

Historical Comparison. To develop a perspective on how weight-loss advertising has changed over time, this report also compares advertisements appearing in a sample of magazines published in 2001 with ads in the same magazines in 1992. Compared to 1992, readers in 2001 saw more diet ads, more often, and for more products. Specifically,

- C The frequency of weight-loss advertisements in these magazines more than doubled, and
- C The number of separate and distinct advertisements tripled.

Moreover, the type of weight-loss products and services advertised dramatically shifted from "meal replacements" (57%), in 1992 to dietary supplements (66%), in 2001. Meal replacement products typically facilitate the reduction of caloric intake by replacing high-calorie foods with lower-calorie

I. An Overview

A. A Never-Ending Quest for Easy Solutions

Since at least 1900, American consumers have been searching for a safe and effective way to lose weight. As a nation, it has been a losing battle. Overweight and obesity have reached epidemic proportions.¹ An estimated 61 percent of U.S. adults are overweight or obese, and the trend is in the wrong direction.² Overweight and obesity constitute the second leading cause of preventable death, after smoking, resulting in an estimated 300,000 deaths per year at a cost (direct and indirect) that exceeds \$100 billion a year.³

The struggle to shed unwanted pounds usually resolves itself into choosing between responsible products or programs that offer methods for achieving moderate weight loss over time and “miracle” products or services that promise fast and easy weight loss without sacrifice. Over the course of the last century, popular weight-loss methods have included: prescription and over-the-counter drugs and dietary supplements; surgical procedures such as gastro-intestinal bypass surgery, gastroplasty (stomach stapling), and jaw wiring; the television shows of motivational weight-loss gurus; commercial weight-loss centers; commercial diet drinks; doctor-supervised very-low-calorie diets, complete with their own vitamin shots, fiber cookies, and drinks; the development of fat-free, low-fat, fake-fat, and sugar-free foods; weight-loss support groups; exercise trends such as aerobics and body building; and cellulite creams.

Almost all weight-loss experts agree that the key to long-term weight management lies in permanent lifestyle changes that include, among other things, a nutritious diet at a moderate caloric level and regular physical exercise. Nevertheless, advertisements for weight-loss products and services saturate the marketplace, with many promising instantaneous success without the need to reduce caloric intake or increase physical activity.

This is not a new phenomenon. In the last 100 years, various types of weight loss products and programs have gained and lost popularity, ranging from the ludicrous – diet bath powders, soaps, and shoe inserts – to the dangerous, such as the fen/phén diet pill combination.⁴ Around the 1900s, popular weight-loss drugs included animal-derived thyroid, laxatives, and the poisons arsenic and strychnine; eventually each was shown to cause weight loss only temporarily, and usually to be unsafe to use. In the 1930s, doctors prescribed dinitrophenol, a synthetic insecticide and herbicide that increases human metabolism so drastically that organs fail, causing blindness and other health problems. The hormone human chorionic gonadotropin (HCG) became popular in the 1950s for weight loss, and resurfaced recently, even though the FDA exposed it decades ago as effective only to treat Fröhlich’s Syndrome, a particular genetic imbalance occurring only in boys.⁵

The 1990s saw an explosion in dietary supplement marketing, many of which are of

Federal Trade Commission has brought numerous cases against the advertisers of weight-loss supplements for making false or misleading advertising claims. Other products may raise serious safety concerns. For example, experts, including the American Medical Association, have raised concerns about the safety of ephedra, a popular diet pill ingredient,⁷ and Health Canada recently warned Canadian citizens against using ephedra for dieting because of its dangerous propensities.⁸

B. The Role of Advertising for Weight-loss Products and Services

As noted above, consumers may choose from a myriad of weight-loss products and services. Consumers make their selections based, in part, on advertising. Advertising that presents false or misleading information may distort consumer decision making. Even more troubling, if the entire field of weight-loss advertising is subject to wide-spread deception, then advertising loses its important role in the efficient allocation of resources in a free-market economy. If the purveyors of

nonprescription weight-loss products during this time period.¹⁵

The amount of total sales for unproven or worthless products is not known, but it is substantial. Infomercials, direct mail advertising, and free-standing inserts can generate tens of millions of dollars in sales within a short period of time for a single product, and, as this report demonstrates, there are hundreds, perhaps even thousands, of weight-loss products on the market. These forms of saturation advertising do not require high response rates to be highly profitable. As an example of the prevalence of hard-sell marketing for non-prescription weight-loss products, spending on infomercials (usually 30-minute to an hour programs pitching products for direct sale via telephone call-ins) for weight-loss and nutrition products exceeded \$107 million in 1999.¹⁶ The alarming increase in overweight and obesity combined with marketers' easy access to mass media outlets makes the business of weight loss a booming enterprise.

II. Collection Methodology and Coding

This report looks at weight-loss advertising disseminated through broadcast and cable television, infomercials, radio, magazines, newspapers (including free-standing inserts in Sunday newspapers), supermarket tabloids, direct mail, commercial e-mail (spam), and Internet websites. We collected a total of 300 advertisements from a variety of sources. Except as noted with regard to Internet sites, we did not attempt to select a scientifically random sample.¹⁷ At the same time, no effort was made to collect just "bad" ads. In general, these advertisements appeared between February and May 2001.

Television and radio advertisements: Members of the Partnership for Healthy Weight Management¹⁸ (the Partnership) monitor for a Tw (The amount of total sales foebruarsa0sebr idcallyyser196.5 6 TD -0.3

because of their past history of running questionable weight loss advertisements. With regard to magazines published on a monthly basis, we reviewed each issue from February through May for weight-loss advertisements. We reviewed only selected editions of weekly publications.

Newspapers: The FTC staff obtained a sample of U.S. newspaper advertisements from Burrelle's Information Services, a newspaper clipping service. The ads appeared during April and the first week of May 2001. We included newspaper ads in our sample if they contained references to specific amounts of weight loss, *e.g.*, lose 30 pounds by summer, or John Doe lost 30 pounds.

Direct Mail and Unsolicited Commercial e-mail (spam): We collected direct mail and spam ads from the FTC staff, members of the Partnership, and consumers.

Internet Ads: The Partnership and two Northern Illinois University researchers organized a "surf day" project to identify relevant websites. In December 2000, a student-team collected data, using 14 popular search engines and 139 keyword search terms, about Internet websites containing weight-loss related information.²⁰ Through this process, participants located thousands of Internet websites. Researchers compiled URL and other information about the websites in a database. The FTC staff randomly selected every 50th still-active site in the database until it had accumulated a representative sample of 44 commercial sites that promoted weight-loss products and/or services.

The FTC staff collected and coded the following information from each advertisement: company name; product name; product type, *e.g.*, meal replacement; publication and publication
spam)c Tj ET 108 571.5 246.75 030 TDng
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collected information concerning the active ingredients in the product if the advertisement provided that information.

III. Analysis of Weight-loss Advertisements

A. General Observations

An ad for a product made from ground-up shells of shrimps, crabs, and lobsters claims, “Scientists dedicated years of research to come up with a high powered diet ingredient with no side effects” and asks, “Have you ever seen an overweight fish? Or an oyster with a few pounds too many? Everyone knows that sea animals never get fat.” A testimonial in this ad alludes to the product’s ability to select only unwanted fat deposits: “The best thing about [the product] is that my waist size is 3 inches smaller, now only 26 inches. And it has taken off quite some inches from my butts [sic] (5 inches) and thighs (4 inches), my hips now measure only 35 inches. I still wear the same bra size though. The fat has disappeared from exactly the right places.” In fact, there is no convincing evidence that the shells of shrimps, crabs, or lobsters cause weight loss or that weight loss can be selectively targeted to specific parts of the body.

An ad for a second product whose active ingredient is apple pectin is headlined, “LOSE UP TO 2 POUNDS DAILY... WITHOUT DIET OR EXERCISE! I LOST 44 POUNDS IN 30 DAYS!” The ad further claims that “Apple pectin is an energized enzyme that can ingest up to 900 times its own weight in fat. That’s why it’s a fantastic fat blocker.” The ad claims that the product can “eliminate fat for effortless weight loss” and that it produces the “same results as jogging 10 miles per week, an hour of aerobics per day, 15 hours of cycling or swimming per week.” In fact, there is no known pill that will cause up to two pounds of weight loss daily (with or without diet and exercise), and the claim of 44 pounds of weight loss in 30 days is not credible.

In an infomercial for yet another weight-loss product, a beaming spokesperson and a purported scientific expert standing in front of a colorful pastry display assure viewers that to lose weight while using the product, “you don’t really need any willpower. You don’t have to diet or deprive yourself of foods in any way.” As the endorsers make these claims, the words “Call Now” and “Risk Free,” with the telephone number to order, appear in large, yellow text on one part of the screen on a blue background. At the same time, dim and indistinct white letters on a moving, mottled background advise, “A healthy diet and exercise are required to lose weight.”

The world of weight-loss advertising is a virtual fantasy land where pounds “melt away” while “you continue to eat your favorite foods”; “amazing pills . . . seek and destroy enemy fat”; researchers at a German university discover the “amazing weight loss properties” of asparagus; and the weight-loss efficacy of another product is comparable to “running a 20 mile marathon while you sleep.” It’s a world where, in spite of prevailing scientific opinion, no sacrifice is required to lose

weight (“You don’t change your eating habits and still lose weight”). Quick results are the (promised) norm (“The diet works three times faster than FASTING itself!”). You can learn how to lose weight with “No exercise. No drugs. No pills. And eat as much as you want – the more you eat, the more you lose.” There is no need to worry because the products are “safe,” “risk free,” and/or “natural,” and some marketers are so concerned for your safety that they warn you to cut back if you lose too much weight (“If you begin to lose weight too quickly, take a few days off!!!”). You can always get your money back because so many of these “amazing” products are “guaranteed” (“. . .we’ll give you your money back. Straight away. No questions asked”).

And for those who remain skeptical, there is an answer. The products are backed by “clinical studies” or are “clinically tested” (“Clinical and laboratory tests at leading universities and hospitals, have proven that this product is effective”). Even if they do not purport to be clinically proven, many claim to be the product of years of scientific research (“Scientists dedicated years of research to come up with a high powered diet ingredient with no side effects”) or are “doctor recommended.”

Moreover, according to many of the ads, you can “stay slim forever” because the weight loss is “permanent” (“I can still eat whatever I want without any danger of gaining the weight back.”). Finally, you can say good-bye to the failure syndrome because no matter how many times you’ve tried to lose weight in the past, the product will give you the “secret to lasting weight loss success.”

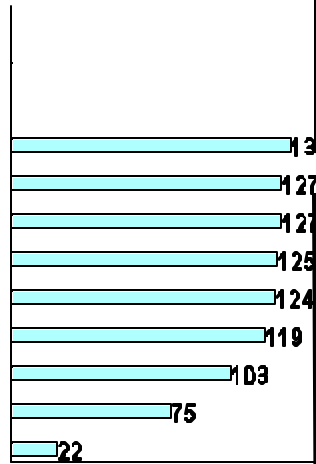
B. Media and Product Types

Three hundred advertisements for 218 different products or services were collected and reviewed. A list of the products is included in Appendix A. Table 1 identifies the number of ads for each type of medium.²¹

The advertisements covered virtually every kind of product or service imaginable. Categories with 10 or more advertisements included: dietary supplements (157), meal replacements (*e.g.*, diet shakes) (33), hypnosis (27), food (15), diet plans/programs/diet centers (21), transdermal products (patches and creams) (11), and wraps (10). Some ads promoted multiple products, and in some instances, it was not possible to determine the product category based solely on the advertisement. Only about half (49%) of the advertisements for dietary supplement or transdermal products disclosed the product’s active ingredients in the

Table 1: Number of Ads by Media Type

Medium	Number of Ads
Newspaper/FSI	85
Magazine	68
Tabloids	19
Internet	44
Commercial email	41
Direct Mail	27
Radio	13
Broadcast	7
Infomercial	5



WEIGHT LOSS ADVERTISING: WASTE LINES

Depicted in this "weightloss advertisement" are the percentages (in percentages) of what the FTC found in common trends in the language used in today's weightloss ads.

LOSE WEIGHT SAFELY & EASILY

42%

If you are like most people, you've tried dieting before & failed or lost weight only to gain it all back.

34%

42%

BEFORE...
...AFTER

* results are never typical or actual product results.

57%

With NordicaLite you see results in just 2 short days!!!

65%

Jayne Doe of Erie, PA lost 43 lbs. in 6 weeks on NordicaLite...

41%

...you lose weight permanently!
Jayne has kept her weight off for over 10 years!

40%

The miracle ingredients in NordicaLite have been tested and proven effective in a major university-based study in Goteberg, Sweden.

25%

NordicaLite is approved and endorsed by physicians for use by their patients

The all-natural ingredients in NordicaLite make it possible...

11%



...to lose weight WITHOUT diet or exercise and still eat all your favorite foods!

42%

52%

NordicaLite

WEIGHT LOSS ASSISTANCE
www.market4u.net/nordicalite

RESULTS GUARANTEED!

Please rush me my order A.S.A.P. I understand that if I am not completely satisfied, I can return my shipment for a Full Money-Back Guarantee (no questions asked).

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Use my: Visa Mastercard
Card #: _____ Exp Date: _____
Signature: _____ Tel. #: _____



CAUTION:

If you start losing too much weight on this program, slow down.

7%

as little as 30 days likely fall into this category. Second, the reported weight loss may not be attributable to the product, but to other diet, exercise, or lifestyle changes. Third, an advertisement presenting testimonials claiming extreme and atypical weight loss as typical or ordinary experiences is likely to be deceptive without an indication of the more modest weight loss results that the typical user would experience using the product.²³

Typicality Disclaimers: The most common way to address this last issue is through disclaimers. Seventy (70) of the 195 ads (36%) had some form of disclaimer addressing the issue of whether the reported results are meant to be representative of users of the product or service. In only 18 of the cases, however, was the disclaimer conspicuous or proximate to the testimonials. In the vast majority of advertisements, disclaimers were buried in fine print footnotes or, in video ads, flashed as a video superscript too quickly for viewers to read. Table 3 provides a sample of disclaimers found in the selected advertisements.

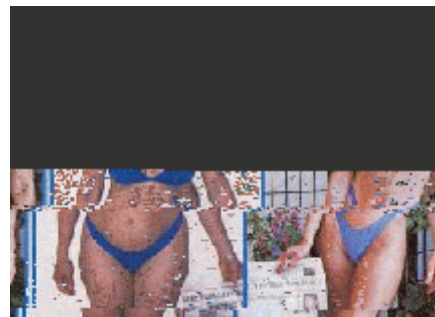
Some of these disclaimers do little to inform consumers that the results reported in the advertisements are, at best, extreme cases, and that consumers should not expect to achieve similar results. For example, a disclaimer telling consumers that “results may vary” tells consumers almost nothing other than that everyone will not achieve 50 pounds of weight loss. With one or two notable exceptions, advertisers made no effort to provide specific information about the actual weight loss the average consumer could expect using a particular product.

2. Before/After Photos

Before-and-after photos, often appearing with testimonials, are commonly used in weight loss ads. Forty-two percent (42%) of the ads in this sample contained before-and-after pictures. More than just graphic consumer testimonials, these pictures try to create an image of what the consumers could accomplish personally if they only used the advertised product. Before-and-after pictures usually fall into one of two categories: (1) the illustrated personal testimonial, and (2) the

Table 3: Sample disclaimers used in weight-loss advertisements.

Results not typical and depends on diet and training program.
Results not typical.
Results may not be typical.
Results may vary.
Individual results vary and can be more or less than the results mentioned.
Results Atypical.
These results are not typical of every client. As individuals vary, so do results.
Your results may vary.
Benefits vary from each person.
Results obtained with this program can and do vary.
Yes! These are actual comments from our customers – girls just like you telling us about the exceptional, non-typical results they got with our amazing weight loss system.



clinical comparison of isolated body portions.²⁴ The former type often contains the following elements:

Before Picture: Snapshot quality photograph of the subject that incorporates poor posture, neutral facial expression, unkempt hair, unfashionable attire, poor lighting, and washed out skin tones.

After Picture: Brightly lit (sometimes studio portrait quality) pose of smiling subject in fashionable, often skimpy, attire, shoulders held back, tummy tucked in, with a stylish hair style and carefully applied makeup.

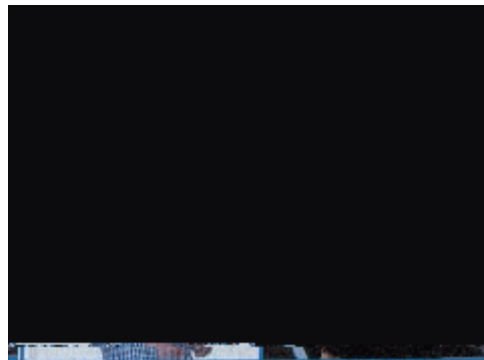
Eighty-eight percent (88%) of the ads with before-and-after pictures contained illustrated testimonials. In television spots and infomercials, this type of before-and-after treatment often incorporates a before photograph superimposed over a videotaped segment featuring the subject after using the advertised product or service making his/her videotaped testimonial.



Another form of before-and-after illustration isolates one portion of a subject's anatomy, usually the waist or buttocks, to show purported results, sometimes in a progression of three or more photographs over a period of time. These pictures often emulate the kind of illustrations found in medical articles. A few ads (two in this sample) feature both types of before-and-after pictures. Eleven percent (11%) of the ads with before- and-after pictures featured "clinical" comparison pictures.



Often the only discernable difference in the before picture and the after picture is a change in posture and body control. In the before picture the subject's shoulders are slumped, the abdominal muscles are relaxed, and the pelvis thrust forward to emphasize body fat. The after picture shows the subject holding in his/her abdomen and/or holding back his/her shoulders to emphasize lean body mass. A close examination of the before picture in this type of ad raises the question of whether the subject needed to lose weight and suggests that little or no weight was actually lost.



Some before-and-after photographs clearly appear to have been altered, usually by placing an image of the after subject's head on the photographic image of another (very obese) subject's body. Finally, it is not always clear whether "clinical" before-and-after pictures are depicting the results from actual users of the advertised product or service or are intended merely to be illustrative of the product's or service's capacity to produce weight loss.



3. Rapid Weight-loss Claims

Fifty-seven percent (57%) of the ads in our sample promised rapid weight loss, often claiming that excess weight or fat can disappear in a matter of days or weeks. Claims in this category range from explicit promises of rapid weight loss ("A Quick Weight Loss Plan For People In A Hurry" "RAPID WEIGHT LOSS IN 28 DAYS!" "Clinically proven to help you lose weight . . . fast") through claims for immediate or near immediate results ("Starts to work within 90 minutes" "You can lose 18 pounds in one week!" "Ingredients not disclosed")

Table 4: Representative Claims That Promise Fast Results

"This combination of plant extracts constitutes a weight-loss plan that facilitates what is probably the fastest weight loss ever observed from an entirely natural treatment." (elixir purportedly containing 16 plant extracts)

"Just fast and easy, effective weight loss!" (fucus vesiculosus)

"Lose 10 lbs. in 8 Days!" (apple cider vinegar)

"Rapid weight loss in 28 days!" (ephedra)

"Knock off your unwanted weight and fat deposits at warp speed! You can lose 18 pounds in one week!" (ingredients not disclosed)

"Clinically proven to cause rapid loss of excess body fat." (phosphoserine)

"Two clinically proven fat burning formulations that are guaranteed to get you there fast or it costs you absolutely nothing." (ingredients not disclosed)

forth in Table 4. Even the product names (“Redu-Quick, “Slim Down Fast”) emphasize speedy results.

Such results are not only unlikely, they would be accomplished at an increased risk to health. Rapid weight loss has been associated with an increased risk of developing gallstones.²⁵ Consequently, responsible programs that offer proven means of rapid weight loss for obese patients with such diseases as coronary artery disease or Type II diabetes provide physician supervision while patients are actively losing weight.

Rapid weight-loss claims often appeared in combination with the promise of easy weight loss (“Lose those pounds the quick and easy way,” “Lose weight while you sleep,” “Lose weight quickly and easily and keep it off”) without the need for diet or exercise. In 54R”ion with then meaeer dth then meayTan

Table 5: Lose Weight Without Diet or Exercise Claims

“awesome attack on bulging fatty deposits . . . has virtually eliminated the need to diet.” (Konjac root pill)

“They said it was impossible, but tests prove [that] my astounding diet-free discovery melts away...5, 6, even 7 pounds of fat a day.” (ingredients not disclosed)

“The most powerful diet pill ever discovered! No diet or workout required. The secret weight-loss pill behind Fitness models, Show Biz and Entertainment professionals! No prescription required to order.” (ingredients not disclosed)

“lose up to 30 lbs . . . No impossible exercise! No missed meals! No boring foods or small portions!” (plant extract fucus vesiculosus)

“lose up to 8 to 10 pounds per week . . . [n]o dieting, no strenuous exercise.” (elixir purportedly containing 16 plant extracts)

“my 52 lbs of unwanted fat relaxed away without dieting or grueling exercise.” (hypnosis seminar)

“no exercise...[a]nd eat as much as you want – the more you eat, the more you lose, we’ll show you how.” (meal replacement)

that the advertised products and services will produce fast results. These ads include such claims as “[t]ake off up to 10 pounds and 6" in just 2 days...[n]o exercise,” “lose 3-4 pounds a week without dieting or exercise,” “[I]’ve lost 68 lbs in 4 months...does not require restricted diets or exercise,” and “[I] ate more and exercised less and still lost 44 lbs.”

5. Lose Weight Permanently

“You lose it. You gain it back. Use [the advertised product] with every diet program and keep it off.” Many consumers have lost weight only to gain it back again. In fact, studies indicate that most people who lose weight gain it back within five years.²⁹ Consequently, “take it off and keep it off” claims are fairly common in weight-loss advertising. In spite of the blue-sky promises of many marketers (“Get weight off and keep it off,” “You won’t gain the weight back afterwards, because your weight will have reached its equilibrium,” “Discover the secret to permanent weight loss”), experts have repeatedly observed that although persons generally lose weight while actively participating in a weight loss regimen treatment, they tend to regain the weight over time once treatment ends.³⁰ According to the National Academy of Science Food and Nutrition Board, “Many programs and services exist to help individuals achieve weight control. But the limited studies paint a grim picture: those who complete weight-loss programs lose approximately 10 percent of their body weight only to regain two-thirds of it back within 1 year and almost all of it back within 5 years.”³¹

For persons who have lost weight in the past only to gain it all back again, the appeal of a “once and forever” weight-loss product can be strong, especially when combined with references to the syndrome of failure many dieters experience or the promise of effortless, no-sacrifice weight-loss success. (Table 6) According to almost all weight-loss experts, if there is a key to long-term maintenance success, it requires permanent lifestyle changes on the part of the dieter: nutritional eating at moderate caloric levels, a regular physical fitness routine, and abandonment of old habits that may have contributed to weight gain.³²

Table 6: Long-term Weight Maintenance Claims and Other Related Claims

Percentage of ads with long-term maintenance claims	41%
Percentage of ads combining long-term maintenance claims with no diet or exercise claims	26%
Percentage of ads combining long-term maintenance claims with references to past failures	23%
Percentage combining all three	15%

The publicly available scientific research contains very little evidence that would substantiate long-term or permanent weight-loss claims for most of today’s popular diet products. Experts usually insist on studies going out at least one year, if not two, in order to substantiate a claim for long-term weight-loss maintenance.³³ Reliable studies of the long-term effectiveness of weight-loss

Table 8: Clinically Proven, Medically Approved Claims

Percentage of all ads with clinically proven claims	40%
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Still another technique that advertisers use to convince consumers that they are buying a tested and proven product is to assure consumers that a product is “recommended,” “approved by,” and often “developed” or “discovered” by a medical professional. (Table 8) For example, several advertisements prominently feature a “physician” wearing a white lab coat and a stethoscope and sitting in front of a diploma-filled wall. To add an air of legitimacy to the advertised product, some advertisements appear to be written by a physician. Others feature interviews with doctors or researchers who tout the product as being safe and effective. One Internet site even invites customers to call a “Medical Advisory Board” staffed with “qualified medical professionals” to answer medical questions.

Expert endorsements, however, can be misleading. For example, an advertisement may fail to disclose that the medical professional endorsing the product has a financial interest in promoting the sale of the product – a fact likely to affect the weight consumers give the endorsement and that could affect their purchase decision.³⁶ Marketers may even use a fictitious medical professional to endorse their products.³⁷ In other instances, experts either may not have actually reviewed the scientific evidence on the product or its ingredients or failed to utilize existing expert standards in conducting their review.³⁸

8. Money-back Guarantees

The analysis revealed that money-back guarantees are one of the most frequently used techniques in weight-loss advertising. Fifty-two percent (52%) of all the ads reviewed include this representation. (Table 9) One advertiser, for example, encourages consumers to pay the price of the product only if the product has helped the consumer slim down: “If not, send it back and pay nothing. There will be no questions asked and you won’t owe us a dime.” Another advertiser advises consumers that the company would not guarantee its products if they did not work as advertised: “Believe me, I am not a gambler.

Table 9: Money-back Guarantees

Percentage of ads that promise guaranteed results	52%
Percentage of ads that have both guaranteed results and no more failure claims	24%

I would never provide such an opportunity if I wasn’t totally convinced that this is the weight-loss breakthrough of the decade, and there’s no need to worry about too many requests for refunds.”

Although many companies guarantee “consumer satisfaction” in general, several advertisements make very specific guarantees: “Whether you diet or not, [the marketer] guarantees that you’ll lose up to seven pounds in the first week and then one dress or pant size every two weeks thereafter, or pay nothing.” Another marketer promises consumers that, “no matter how many times you’ve tried before . . . no matter how much weight you have to lose . . . no matter how sluggish your metabolism . . . you will lose up to 10 to 15 pounds in just one week . . . up to 35 pounds in 3 weeks. Yes. Guaranteed! You lose or it doesn’t cost you a penny.”

For any number of reasons, marketers may fail to honor refund requests at all or delay honoring them for months. In fact, the Federal Trade Commission has brought several cases against marketers failing to make refunds promised in their advertising.³⁹

9. Safe/All Natural Claims

Safety claims are a prevalent marketing technique in weight-loss advertising. Nearly half of all the ads in the sample (42%) contained specific claims that the advertised products or services are safe. These claims are made in a variety of ways. Some ads contain direct, unqualified representations about the safety of the product or service in producing weight loss, including such

Finally, of those weight-loss advertisements that contained safety claims, 27% also included some type of safety-related warning in the advertisements. These warnings varied widely in substance and detail. Some stated simply that you should “consult your doctor,” or “consult your physician before beginning this or any weight-loss or exercise program.” Others included more targeted warnings, such as “do not use this product if you have high blood pressure, are pregnant or breast feeding, or on medication for a heart condition.” Often, the safety warning is presented in a manner that viewers are likely not to notice it.

One ad contained a warning about serious health effects: “[t]his product has ephedrine group alkaloids in the form of herbal extracts and may cause serious adverse health effects.” This ad also included the claim that the product was “shown to be safe by two independent laboratories.” Conflicting messages in an advertisement about safety may confuse consumers and, ultimately, may cause them to ignore safety-related warnings.

Safety claims for weight-loss products are of serious concern. The primary concern is that potentially serious adverse health effects can result if the claim is untrue or the effects of a product are unproven. This concern is particularly important where the product may present special undisclosed risks for certain populations, such as pregnant women or nursing mothers, or where the long-term health effects are unknown. In addition, certain products or ingredients may interact adversely with other medications that consumers might be taking, or may exacerbate pre-existing health conditions faced by overweight and obese consumers, including, for example, heart disease, high blood pressure, and diabetes. Ephedra or ephedrine alkaloids, for example, may be associated with dangerous effects on the central nervous system and heart and may result in serious injury for some persons.⁴¹

Almost half (48%) of the ads that identified ephedra as a product ingredient made safety claims, yet only slightly more than half of those (55%) included a specific warning about the health risks of ephedra. Only 30% of all ads that identified ephedra as an ingredient included a specific health warning about its potential adverse effects. Even more disturbing from a safety perspective, fully 60% of ads that made safety claims did not identify ingredients at all. Consumers’ inability to make informed decisions about the safety of such products clearly raises the potential for serious adverse health consequences.

IV. Historical Comparison: 1992/2001

To develop a perspective on how weight-loss advertising has changed over time, we compared advertisements appearing in a sample of magazines published in February thru May 2001 with ads that appeared in the same magazines in February thru May 1992. The magazines selected were

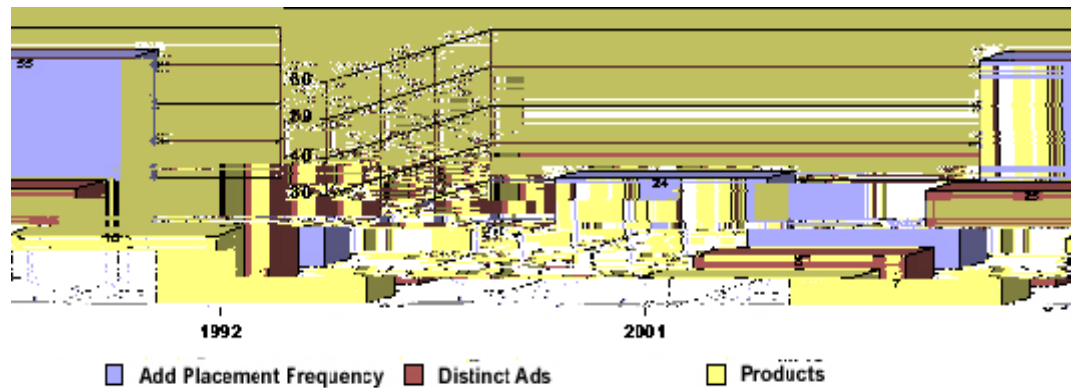
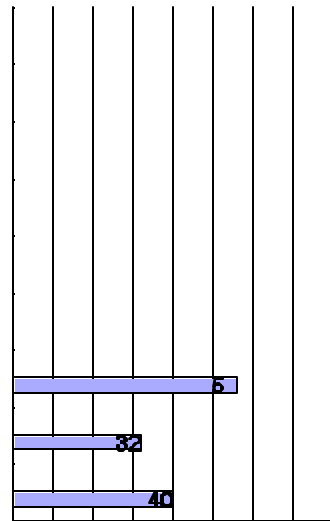


Table 10: Product Comparison

Product Type	1992	2001
Meal Replacements	4	3
OTC Drugs	2	0
Exercise Equipment	1	0
Dietary Supplements	0	12
Topical Treatments	0	1
Food	0	1
Diet Center	0	1



2001

- You could lose 8 to 10 pounds per week, easily, . . . and you won't gain the weight back afterwards.
-

- I learned that losing weight requires much more than just dieting – it takes a whole lifestyle change.
- You could lose up to 10 lbs. this weekend!
- Curbs cravings . . . reduces calorie absorption

Although both the 1992 and 2001 examples include unobjectionable statements, as well as facially questionable claims, the 2001 advertisements appear to be more likely to make specific performance promises that are deceptive and misleading. For example, 31% of the 2001 ads made at least one representation that almost certainly is false, compared to zero percent in 1992. These ads appeared in *Family Circle*, *Cosmopolitan*, *Women's Day*, *McCall's*, and *Redbook*.

On its face, although not conclusive, this comparison of 1992 and 2001 ads supports the following observations:

- C The amount of weight-loss advertising has increased dramatically since 1992.
- C The increase in weight-loss advertising is due to the explosion in the number of dietary supplement products now being promoted for weight loss.
- C The use of consumer testimonials claiming substantial, specified amounts of weight loss has increased significantly.
- C The use of specific performance claims, including claims that on their face are almost certainly false, has proliferated.

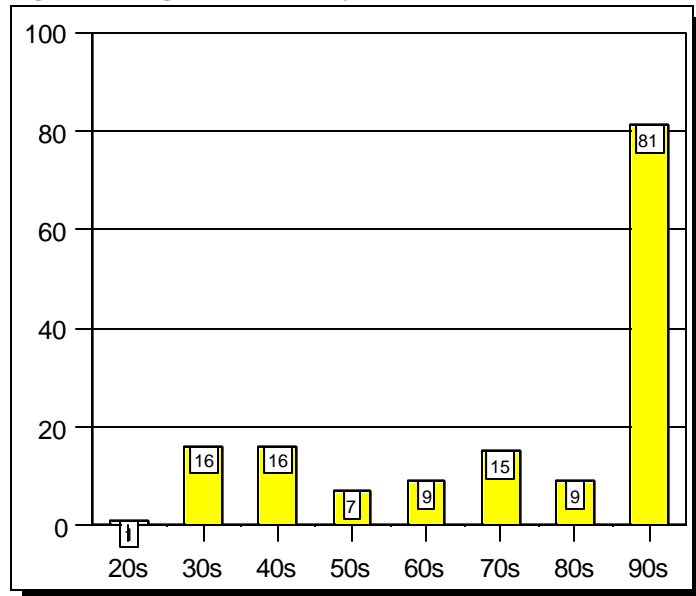
This report looked at only specific magazines and compared only ads appearing during a four-month period in 2001 with ads appearing in the same months for 1992. Without additional supporting evidence, these results cannot be extrapolated to other forms of media. Moreover, there may be alternative explanations for the apparent increase in deceptive ads in these publications that would not necessarily mean that there has been an overall increase in deceptive weight-loss product advertising. For example, it is possible that ads have shifted from other forms of media, such as supermarket tabloids, to these magazines. Nevertheless, the observed results are consistent with the FTC staff's general impressions in monitoring weight loss advertising.

four2 12tentringew smarrtabloidscb22t ar0utesms that weight-loss products andbserieace advertising ia pe mefted with false and misleadine representatioes. Moreover, t istypse of advertising appeaistot followingsjectio,t there has been ant iitoricalle

literally dissolved away, leaving the figure slim and properly rounded, giving the lithe grace to the body every man and woman desires” and “applying and patting it gently onto the parts of the human body which the purchaser desires to slenderize, will thereby reduce any and every part of the body so treated, . . . quickly, surely, and permanently.” It was only the beginning. Since then, the Commission has filed over 160 cases challenging false and unproven weight-loss claims.⁵¹

Throughout the 1990s, the commercial marketplace for the treatment of overweight/obesity was a high-profile topic among policy makers, the media, academia, the scientific community, and government regulators. In 1990, hearings before the U.S. House of Representatives Committee on Small Business focused principally upon the marketing of commercial diet clinics and physician-supervised, very-low-calorie weight-loss programs. The hearings’ underlying message was that beneath the glitter and the hype that comprised so many advertising campaigns for weight-loss products and programs lay the sobering reality that too many consumers ultimately failed in losing weight and keeping it off. The hearings stressed the need for increased government scrutiny of the weight-loss marketplace to police deceptive advertising claims such as unsubstantiated success claims and atypical user testimonials.⁵²

Figure 4: Weight Loss Cases by Decade



Over half of the Commission’s weight-loss cases have been filed since 1990. (Figure 4) The Commission has challenged numerous ingredients touted for their efficacy in producing weight loss, some of which were chitosan,⁵³ chromium picolinate,⁵⁴ pyruvate,⁵⁵ glucomannan,⁵⁶ dietary fiber,⁵⁷ cellulose/ox bile,⁵⁸ fucus,⁵⁹ hydroxycitric acid,⁶⁰ and L-carnitine.⁶¹ In addition, the Commission has challenged the advertising claims of the leading commercial weight-loss centers,⁶² weight-loss promotions for hypnosis,⁶³ and a wide variety of weight-loss devices⁶⁴ and exercise equipment.⁶⁵ Since 1990, FTC cases challenging deceptive claims for diet pills, potions, patches, and programs have resulted in administrative or federal district court orders requiring companies or individuals to pay over \$48 million in consumer redress or disgorgement. Another \$4.35 million has been assessed as civil penalties for violations of prior Commission orders.⁶⁶

Commission for violations of consumer protection laws,

misleading staff credentials and endorsements. The consent orders included remedies that require substantiation for weight-loss or weight-maintenance claims, disclosures triggered by maintenance claims ("For many dieters, weight loss is temporary"), disclosure of total costs, and prohibitions against misrepresenting staff credentials.⁶⁷

This set of orders was followed by "Operation Waistline" in 1997. It consisted of nine cases that focused on advertising claims that consumers could lose weight quickly and easily by using anything from "Fat Burners" diet supplements to skin patches to "slimming" shoe insoles or cellulose-bile products.⁶⁸ In the second phase of this effort, the Commission announced "Operation Workout" – four administrative settlements targeting exaggerated claims for fitness equipment by marketers of some of the most popular exercise equipment on the market, including the Abflex,

1982, issued an advance notice of proposed rulemaking to establish conditions under which OTC weight-control products are generally recognized as safe and effective and not misbranded.⁷⁹ That proceeding culminated in a final rule, issued in August 1991, determining that the 111 ingredients considered in the rulemaking process were **not** generally recognized as safe and effective for weight-control use.⁸⁰ As a result, after February 8, 1992, an OTC product labeled for weight control, other than phenylpropanolamine hydrochloride (PPA) or benzocaine,⁸¹ required some form of pre-market review and approval to determine safety and effectiveness.

In 1994, the passage of the Dietary Supplement Health and Education Act of 1994 (DSHEA) dramatically changed the regulatory framework for weight-loss supplements, shifting FDA's role from premarket clearance to post-market enforcement and shifting the responsibility from government to industry to ensure products were safe and effective. DSHEA created a definition for a class of products called "dietary supplements"⁸² and established that these products are deemed, for almost all purposes, to be foods. The effect was to create two classes of weight-control products. The first class consists of those products intended to treat obesity and non-dietary supplements⁸³ intended to be used for weight control. These products remain subject to pre-market approval requirements. The second class of products consists of dietary supplements intended to be used for weight control. With regard to these products, weight-control statements appearing on the label must be truthful and not misleading and the manufacturer is required to possess substantiation for the statements.⁸⁴ These products, however, are not subject to pre-market approval. As demonstrated in this report, this change in regulatory structure has coincided with a dramatic increase in the number of dietary supplement weight-loss products as well as the amount of weight-loss product advertising. To illustrate, between January 1996 and August 2001, at least 280 nutritional support statements were filed with FDA for dietary supplement products claiming weight-loss related benefits. This figure, of course, does not reflect the many new dietary supplement products for which no FDA filing may have been made. Moreover, according to industry estimates, the sales revenues for weight-loss supplements has increased 10 to 20

Table 11: Top 12 Magazine or Tabloid Publishers (by volume) of Ads Collected for This Report

magazines and tabloids that published ads collected for this report. In most instances, a single ad appeared in more than one publication.

Most broadcasters and publishers already screen ads for taste and appropriateness, but too often the screening process stops short of questioning the accuracy of facially extravagant claims. As this report demonstrates, this shortcoming is particularly apparent in the area of ads for weight-loss products and services. Fraudulent ads cost legitimate advertisers and consumers millions of dollars each year. Government agencies and self-regulatory groups can step in once the ad has been disseminated to an unwary public, but only the media can stop false ads before they are disseminated.

Effective ad clearance standards reduce the damaging effects of advertising fraud on American consumers and commerce. Exercising responsibility in the screening of advertising for weight-loss products and services is a way that the media can contribute to the Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity 2001. That document characterized the media's role in the following manner:

The media can provide essential functions in overweight and obesity prevention efforts. From a public education and social marketing standpoint, the media can disseminate health messages and display healthy behaviors aimed at changing dietary habits and exercise patterns.⁸⁷

Among the strategies that the Call to Action recommended for the media was to "[e]ncourage truthful and reasonable consumer goals for weight-loss programs and weight management products."⁸⁸ This report underscores that in responding to the Surgeon General's Call to Action, the media must assess not only how their editorial content can meet the challenge, but most importantly, how their revenue generating divisions can respond to the call and "promote *truthful* and *reasonable* consumer goals" through the advertising they accept.

VII. Conclusion

False promises of effortless weight loss feed on and exacerbate consumers' hunger for the easy fix to overweight and obesity. Consumers taken in by such attractive claims lose both economically, by wasting resources on products that do not work as advertised, and medically, by foregoing or postponing other weight-loss methods and necessary lifestyle changes that have demonstrated benefits in reducing the adverse health consequences of overweight and obesity.

The use of deceptive and misleading claims in weight-loss advertising is rampant. Nearly 40% of the ads in our sample made at least one representation that almost certainly is false. The vast majority of these ads were for dietary supplements or hypnosis. In addition, 55% of the ads in our sample made at least one representation that is very likely to be false or, at the very least, lacks adequate substantiation. Some of the more obvious questionable representations include:

- C Specific performance claims, such as lose up to 10 pounds per week, that are outside the realm of possibility for the products being advertised;
- C Claims that users can lose substantial amounts of weight rapidly without diet or exercise;
- C Testimonials claiming weight loss that exceed what is physiologically possible under normal circumstances, for example, losing 120 pounds in seven weeks;
- C Claims that weight loss will be long-term or permanent; and
- C Unqualified safety claims or confusing representations concerning safety for ingredients known to have potential risks for a significant number of users or to have potential adverse interactions with commonly prescribed prescription drugs.

Below this level, a considerable number of advertisements contain claims that may be misleading or unsubstantiated. Determining whether the claims in this category are actually deceptive would require further inquiry, such as reviewing the substantiation the advertiser has to support the claim.

The proliferation of misleading weight-loss ads has proceeded in the face of, and in spite of, an unprecedented level of FTC enforcement. Although conclusive evidence is not available, what evidence there is suggests that the incidence of false and deceptive claims has increased over the last decade. It is beyond the scope of this report to recommend specific remedies to combat this growing problem. Nevertheless, the need for critical evaluation seems readily apparent. Government agencies with oversight over weight-loss advertising must continually reassess the effectiveness of enforcement and consumer and business education strategies. Critical questions include whether the level of resources currently devoted to law enforcement is adequate; whether more specific advice to advertisers would improve compliance; and if so, how to provide that advice.

Trade associations and self-regulatory groups must do a better job of educating their members about fair advertising standards and enforcing those standards. This is a particularly difficult challenge. Even companies that subscribe to a self-regulatory code may feel competitive pressure to exaggerate their claims in the face of a marketplace that seems out of control. Unless self-regulatory groups are willing to review questionable advertisements, take disciplinary action where appropriate, and publicize their decisions, the industry as a whole will continue to suffer from a lack of credibility. Even so, a significant amount of the questionable advertising identified in this report was generated by companies that are outside the mainstream of current self-regulatory efforts. With regard to these companies, self-regulation will have little, if any, effect.

It is clear from this report that false and misleading weight loss advertising is not limited to the back of supermarket tabloids. Many of the ads we identified as making almost certainly false claims appeared in mainstream media publications such as *Family Circle*, *Cosmopolitan*, *Women's Day*, *McCall's*, and *Redbook*. Although 74% of the ads in tabloid publications included at least one almost

certainly false claim, so did 54% of the ads in newspapers and FSIs. The media must be encouraged to adopt clearance standards that weed out facially deceptive and misleading weight-loss claims. In most cases, the questionable claims are not hard to identify and asking advertisers for substantiation is not unreasonable. Improved lines of communications between government and self-regulatory groups and publishers could also be beneficial. Although the ultimate decision of whether to disseminate a particular advertisement rests with the publisher, improved communications could be useful in alerting publishers to ads and claims that pose problems.

Finally, individual consumers must become more knowledgeable about the importance of achieving and maintaining healthy weight, more informed about how to shop for weight-loss products and services, and more skeptical of ads promising quick-fixes. Government and industry share a responsibility to insure that accurate and understandable information about weight loss treatments is readily available to consumers. As one expert notes, success will come when the public is convinced “that there is no ‘magic bullet.’”⁸⁹

Endnotes

1. U.S. Department of Health and Human Services. The Surgeon General's call to action to prevent and decrease overweight and obesity. [Rockville, MD]: U.S. Department of Health and Human Services, Public Health Service, Office of the Surgeon General; [2001].
2. *Id.*
3. *Id.* at XIII, 10.
4. See *FDA Announces Withdrawal of Fenfluramine and Dexfenfluramine*, (Sept. 15, 1997), available at <<http://www.fda.gov/cder/news/phen/fenphenpr81597.htm>> (visited Jan. 31, 2002).
5. See generally Laura Fraser, *Losing It: America's Obsession with Weight and the Industry That Feeds on It* (Dutton, 1997) pp. 19, 87-91.
6. See Allison, D.B., et al., *Alternative Treatments for Weight Loss: A Critical Review*, 41(1) *Critical Reviews in Food Science and Nutrition* 1-28 (2001).
7. See Anderson, E.R., AMA Letter to the Food & Drug Administration re: Dietary Supplements Containing Ephedrine Alkaloids, Sept. 28, 2000; U.S. General Accounting Office, *Dietary Supplements: Uncertainties in Analyses Underlying FDA's Proposed Rule on Ephedrine Alkaloids* (July 1999); Haller, C.A. and Benowitz, N.L., *Adverse Cardiovascular and Central Nervous System Events Associated with Dietary Supplements Containing Ephedra Alkaloids*, 343 *N. Engl. J. Med.* 1833-1838 (2000), available at <<http://www.nejm.org/content/haller/1.asp>> (visited Jan. 31, 2002).
8. See Health Canada, *Advisory not to use products containing Ephedra or ephedrine*, available at <http://www.hc-sc.gc.ca/english/protection/warnings/2001/2001_67e.htm> (visited Feb. 2, 2002).
9. Serdula, M.K., et al., *Prevalence of Attempting Weight Loss and Strategies for Controlling Weight*, 282 *JAMA* 1353-1358 (1999).
10. *Id.*
11. Bryant, J., *Fat is a \$34 Billion Business*, *Atlanta Business Chronicle* (Sept. 24, 2001), citing research by Marketdata Enterprises, Inc.
12. *Id.*
13. *Big Gains in Weight Loss*, 169 *Prepared Foods* 104 (Jun. 2000) citing Business Communications Co., Norwalk, Conn., *RGA-111 Weight Loss Supplements, Foods and Beverages*.
14. Blanck, H.M., et al., *Use of Nonprescription Weight Loss Products: Results From a Multistate Survey*, 286 *JAMA* 930-935 (2001).

15. *Id.*

16. Response Magazine: Infomercial Media Billings, available at <http://www.responsemagazine.com/topics/mediabillings/4Q99mediabillings.html> (visited Mar. 25, 2002).

17. The advertisements included in the sample were identified through monitoring of specific media, such as selected magazines; provided by members of the Partnership for Healthy Weight Management; or, in the case of Internet websites, randomly selected from a list of sites identified in an independent Internet surf. In the case of advertisements provided by members of the Partnership for Healthy Weight Management, it is possible that some were selected based on the questionable nature of the claims they contain.

18. The Partnership for Healthy Weight Management is a coalition of representatives from science, academia, the health care profession, government, commercial enterprises, and organizations whose mission is to promote sound guidance on strategies for achieving and maintaining a healthy weight. The Partnership has adopted principles relating to weight loss treatments; adopted voluntary industry guidelines, entitled, *Voluntary Guidelines for Providers of Weight Loss Products or Services*; and published consumer information, including *Setting Goals for Weight Loss: Finding a Weight Loss Program that Works for You*. Additional information concerning the Partnership is available at <http://www.consumer.gov/weightloss/index.htm>.

19. We discarded one infomercial from the sample because it did not involve a weight-loss product.

20. The “surf day” project was organized by Aimee D. Prawitz, Ph.D., Associate Professor, and Judith Lukaszuk, Ph.D., Assistant Professor, with the assistance of Patrick M. O’Neil, Ph.D., Professor and Director, Weight Management Center, Medical University of South Carolina. Drs. Prawitz and Lukaszuk assembled the student-team that collected the data.

21. The total in Table 1 exceeds 300 ads because some ads appeared in more than one form of media.

22. Although the labels for these products likely disclose the ingredients, in many instances consumers order the products over the phone, through the mail, or over the Internet and may never see the label until the product arrives at their home. The failure to disclose the primary active ingredients in weight-loss ads may result in consumers ordering products they would not have otherwise ordered if those ingredients had been disclosed in the ads. This may be the case where consumers have already tried a product with the same active ingredient, for example, chitosan, and it did not work for them. Additionally, consumers may want to avoid certain ingredients in weight-loss products, for example, ephedrine alkaloids or St. John’s Wort, because of fear of serious side effects or adverse drug interactions. In either case, consumers must undertake the resource-intensive task of trying to get refunds or accepting and paying for products they do not want.

23. The FTC has provided detailed guidance on this subject in *FTC Guides Concerning Use of Endorsements and Testimonials in Advertising*, available at

<<http://www.ftc.gov/bcp/guides/endorse.htm>>. These guides are scheduled for periodic review in 2003.

24. A third type, which uses a picture of a professional model for clearly illustrative purposes, is used occasionally. One example like this is included in our database.

25. Weinsier, R., *et al.*, *Medically Safe Rate of Weight Loss for the Treatment of Obesity: A Guideline Based on Risk of Gallstone Formation*, 98 Am. J. Med. 115-117 (1995).

26. Surgeon General's Report (cited in note 1) at 1.

27. This statement of purported study results is a good example of scientific doublespeak seen in many weight-loss ads that we reviewed. For example, the statement "613% greater rate of fat loss" sheds no light on what the actual weight-loss results were, or whether those results were clinically significant.

28. One of the products listed in Table 5 contains konjac root and another contains fucus. The Commission challenged as unsubstantiated weight-loss claims for products containing konjac root (also known as "konjac glucomannan" or "glucomannan") in *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263 (S.D. Fla. 1999) and *Herbal Worldwide Holdings Corp.*, 126 F.T.C. 356 (1988) (consent). The Commission also has taken action against a marketer of a diet patch purportedly containing fucus for allegedly unsubstantiated weight-loss claims. *See 2943174 Canada, Inc.*, 123 F.T.C. 1465 (1997) (consent) (Svelt-PATCH transdermal skin patch).

29. *Methods for Voluntary Weight Loss and Control*, NIH Technol Assess Conf Statement Online 1992 Mar 30- Apr 1; 10, available at <http://odp.od.nih.gov/consensus/ta/010/010_statement.htm> (visited Feb. 2, 2002).

30. *Id.*

31. Thomas, P.R., ed., *Weighing the Options: Criteria for Evaluating Weight-Management Programs* at 1 (National Academy Press 1995).

32. National Institutes of Health, National Heart, Lung, and Blood Institute, *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults*, HHS Public Health Service (1998), pp. 72-3.

33. , 126 F.62rbaltional Acade08.,

35. The FTC typically requires claims about the efficacy or safety of weight-loss products to be supported with "competent and reliable scientific evidence," defined in FTC cases as "tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results." *See, e.g., Roger J. Callahan*, 125 F.T.C. 599, 631-32 (1998) (consent).

36. The FTC requires that a marketer disclose any "material connection" between an endorser and the advertiser (*i.e.*, a relationship not reasonably expected by a consumer that might materially affect the weight or credibility of the endorsement). *See Tru-Vantage Int'l, LLC*, 2001 WL 558240 (F.T.C.) (Mar. 29, 2001) (marketer failed to disclose that the physician endorsing the product was an investor in the company marketing the product); *Body Wise Int'l, Inc.*, 120 F.T.C. 704 (1995) (consent) (marketer failed to disclose that the physicians and other health-care professionals endorsing the advertised product were distributors of the product and derived income from their sale).

37. *See Global World Media Corp.*, 124 F.T.C. 426 (1997) (consent) (advertisement included an endorsement from a fictitious physician).

38. *See Synchronal Corp.*, 116 F.T.C. 989 (1993) (consent).

39. *See, e.g., Wayne Phillips Seminars, Inc.*, Civil Action No. 88-1220 PHX CAM (D. Ariz. Aug. 2, 1988) (Stipulated Final Judgment); *Zygon Int'l, Inc.*, 122 F.T.C. 195 (1996) (consent); *Taleigh Corp.*, 119 F.T.C. 835 (1995) (consent).

40. Weinsier (cited in note 25).

41. *See Anderson* (cited in note 7); *Dietary Supplements: Uncertainties in Analyses Underlying FDA's Proposed Rule on Ephedrine Alkaloids* (cited in note 7); and *Haller and Benowitz* (cited in note 7). The Ephedra Education Council, an industry trade group, endorses the following disclosure on the label of products containing ephedrine: "Not for use by anyone under the age of 18. Do not use this product if you are pregnant or nursing. Consult a health care professional before using this product if you have heart disease, thyroid disease, diabetes, high blood pressure, psychiatric condition, difficulty in urinating due to prostate enlargement, or seizure disorder, if you are using a monoamine oxidase inhibitor (MAOI) or any other prescription drug, or if you are using an over-the-counter drug containing ephedrine, pseudoephedrine or phenylpropanolamine (ingredients found in certain allergy, asthma, cough/cold and weight control products). Exceeding recommended serving will not improve results and may cause serious adverse health effects." The Commission has taken action against marketers of products that included ephedra, requiring, among other things, affirmative disclosures to consumers warning them about the serious health risks of ephedra. *See, e.g., Robert C. Spencer*

43. Working Agreement Between FTC and Food and Drug Administration, 3 Trade Reg. Rep. (CCH) ¶ 9,850.01 (1991).

44. *Id.*

45. The Commission enforces Section 5 of the Federal Trade Commission Act (FTC Act), which prohibits “unfair or deceptive acts or practices in or affecting commerce,” 15 U.S.C. § 45, and Section 12, which prohibits the false advertisement of “food, drugs, devices, services, or cosmetics,” 15 U.S.C. § 52. Advertising is deceptive under Section 5 of the FTC Act if it contains a representation or omission that is likely to mislead consumers acting reasonably under the circumstances, and the representation or omission is material; that is, likely to affect consumers’ conduct or decisions with respect to the product or service at issue. Examples of material claims are representations about a product’s performance, features, safety, price, or effectiveness. Advertising is false under Section 12 of the FTC Act if it is misleading in any material respect.

46. Commission enforcement actions have not been limited just to the advertiser. The Commission has also pursued advertising agencies, retailers, and others who assist or facilitate the advertiser in the creation or dissemination of deceptive advertising. Accordingly, all parties who participate in the dissemination of advertising of weight-loss services and products should insure that claims are presented truthfully and check the adequacy of the support behind those claims.

47. These principles are articulated in *FTC Policy Statement on Deception* and *FTC Policy*

53. *FTC v. Enforma Natural Products, Inc.*, No 00-4376JSL (CWx) (C.D. Cal. Apr. 25, 2000) (Stipulated Final Judgment) (\$10 million in consumer redress ordered).
54. *Nutrition 21*, 124 F.T.C. 1 (1997) (consent).
55. *Enforma Natural Products* (cited in note 53).
56. *SlimAmerica* (cited in note 28).
57. *National Dietary Research*, 120 F.T.C. 893 (1995) (consent).
58. *William E. Shell, M.D.*, 123 F.T.C. 1477 (1997) (consent).
59. *2943174 Canada* (cited in note 28).
60. *Victoria Bie*, 123 F.T.C. 96 (1997) (consent).
61. *Weider Nutrition Int'l*

Cambridge Diet low calorie and very low calorie weight-loss programs, with formula drinks).

69. *Abflex, U.S.A., Inc.*, 124 F.T.C. 354 (1997) (consent).

70. *Life Fitness*, 124 F.T.C. 236 (1997) (consent).

71. *Icon Health and Fitness, Inc.*, 124 F.T.C. 215 (1997) (consent).

72. The fourth settlement was with Kent & Spiegel Direct, Inc., the producer of the infomercial for the Abflex abdominal exerciser. *Kent & Spiegel Direct, Inc.*, 124 F.T.C. 300 (1997) (consent).

73. *NordicTrack*,

79. 47 C.F.R. § 8466.

APPENDIX A

Product List

3 Day Diet Plan
48 Hour cyclone diet
A Nu You
ABC Diet Program
Advanced Weight Loss
Advanced Weight Loss & Wellness

AdvantRx Weight Loss Accelerator
Advocare
Algoxyl
Alph-Lean
AM-300
Amazing Mega Trim
Amerifit Fatburner System
Ann Morgan Book

Apidex-P

Apple Cider Vinegar Granules

CarbFighter

Cellucal

CelluLife Anti-cellulite Fashion Hosiery

CelluRid

Changes Now Super Fat Binder

Cheat and Lean

Chito-Trim

Chitogenics

Chitosan

Chitosan

Chitosol

ChromasTherm

Cutting Gel

Cyclone Diet System

Cytodine Xenadrine

Cytoplex

Dallas Hypnosis Center

Dermalin-Apg

Dessert Avert

DetoX

Didrex

dietdivas

DietMagic

Gentle Ferocity
Get Slim Slippers
Goen Method
Gorayeb Weightloss Seminar
Grow.Lean 15
Herbal Body Wrap
High Protein Low-Carb Diet Quick Weight Loss Diet
Hollywood 48-Hour Miracle Diet
Hollywood Miracle Diet
Human Growth Hormone
Hunger Ease
Hydroxycut
Inches-A-Weigh
Inferno
Ionamin
Jenny Craig
Kaloski Method
KarbKiller
Kashi Cereals
LA Weight Loss Centers
Lipodrene

Lipoguard
LipoSlim
Lipotropic Injections

Livatone
LivLite Weight Management Program
Luprinol
Magic Herb Diet Plus Chromium Picolinate
Mega Apple Cider Plus
Meridia
Meta-Biological Dietary Supplement
Metabolic Weight Loss Center
Metabolic Research Center
Metabolic Thyrolean
Metabolic Weight Loss

Negative Calorie Diet ebook
newStart
Nu Life
Nutri/System
Oleda Super Fat Burner
OptiBurn
Optifast
Optifast Plan
Oral GH formula
Oxycise
OZ Garcia's Celebrity Slim 5 Day Diet Plan
PatentLEAN
Phentermine
Physicians Weight Loss Centers
Picture Perfect Weight Loss
Plant Macerat
Positive Changes Hypnosis Centers
Power Diet Plus
Prescriptions for Healthy Living
Protein and Plus Diet System
Pure Lipotric Fat-Burner Tablets
Quick Slim
redu-quick
Richard Simmon's Lose Weight & Celebrate Plan
RS-Fire
Satietrol
Scan Diet
Sea Clay Body Wrap
Serotril
Simple Center Hypnosis

Simply Slender Body Wraps
Simply Slym
Skinny Me
Sleep A Weigh
Slender Life Weight Loss Centers
Slender Now Weight Management Program
Slenderstrip
Slendior
Slimdown Fast
SlimSense System
Slim N Thin Rapid Burn Diet

Synergie Lifestyle System

TG-2000 Fat Burner
The Body Wrap
The Original Hollywood Celebrity Diet
The Ultimate Weight Loss eBook
Thermal Carb
Thermo Balance
Thermo Life
Thermo-Lift Classic
Thermo-Lift II
Thermo-Lift
Thermo Phen Fen
Thermogencis Plus Stimulant Free
ThermoGencis Plus Quick Start
ThermoGold
~~Thermogenic Weight Management Program~~

ThermoSlim
ThermoSulp
Thyro-Slim A.M./P.M.
~~ThermoStart~~

Thyrox T-3
Tonalin CLA
ToppFast
Tri-Amacil
Trim Spa

TrimSpa
Triphetamine

APPENDIX B

Examples of Questionable Ad Claims From 2001 Sample

- Headline: "THE FASTEST ALL-NATURAL DIET KNOWN FOR RAPID WEIGHT LOSS WITHOUT A PRESCRIPTION!"

Body of the ad: The regular-sized print boasts that while using the product, "You can even eat as much as you like and still lose weight! When properly distributed, an intake of 4000 calories a day can actually help you to lose weight instead of gain it." The small (very small) print across the bottom of the page is nearly illegible but reveals that these

doctors before beginning a weight-loss plan, and that "Individual results may vary and

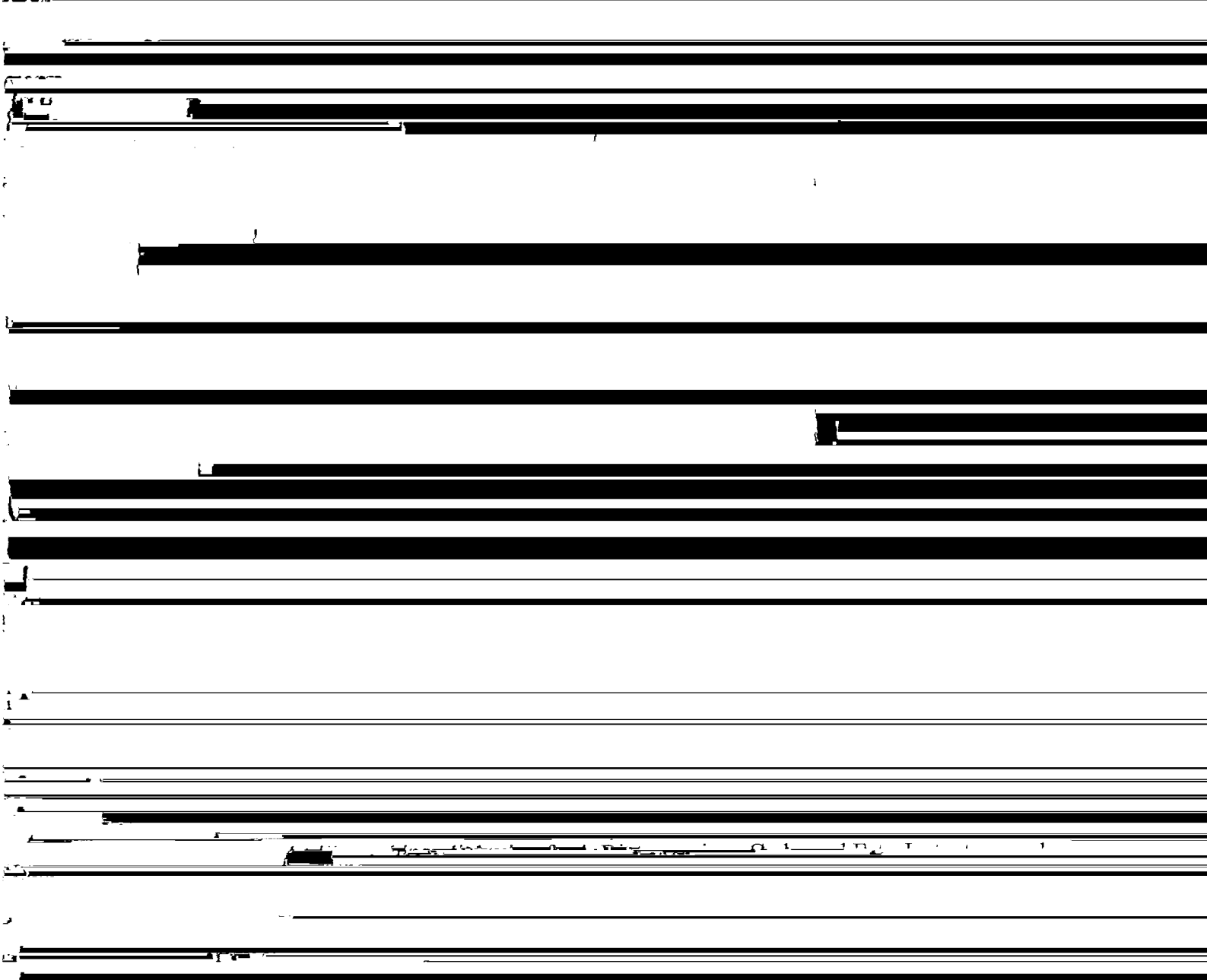
- Headline: “Our amazing ‘Herbal Bullet’ blasts Fat and Flushes it out of your body!”

Body of the ad: "You'll actually burn 12-16 times more fat each day than running 110 miles/week, 200 situps and pushups a day or 12 hours of nonstop Marine Corps calisthenics.”

“You burn away all the calories in all the food you take in, every time you eat.”

The ad ran in the *Kansas City Star*.

- Headline: "Look like a model or be one with [product name]. Our amazing ‘Herbal Bullet’ blast Fat and Flushes it out of your body!” *Kansas City Star*.



FOR THE CONSUMER

FEDERAL TRADE COMMISSION

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